

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Inquiry Concerning High-Speed Access to the  
00-185  
Internet Over Cable and Other Facilities

GN Docket No.:

Internet Over Cable Declaratory Ruling

Appropriate Regulatory Treatment for  
Broadband Access to the Internet Over Cable Facilities

CS Docket No.: 02-52

To: The Commission

COMMENTS OF THE PARISH OF JEFFERSON  
POLITICAL SUBDIVISION IN THE STATE OF LOUISIANA

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I. BACKGROUND

Jefferson Parish, a duly formed political subdivision of the State of Louisiana, with a population of approximately 470,000 persons, and Cox Communications, Inc. entered into a contract regarding a Cable Communications System on March 27, 1990. The contract runs through October 31, 2006. Under the terms of the agreement Cox contracted to pay a fee equal

to 5% of gross revenues collected on all services it sold in Jefferson Parish in exchange for the right to install and use coaxial cable lines on the public rights of way owned by the citizens of Jefferson Parish.

Jefferson Parish files this comment in response to the March 14, 2002 ruling because it maintains that this FCC ruling improperly interrupts existing contractual rights and obligations and further the ruling will have an adverse effect on important administrative functions of this local government.

Unlike some other communities and some other franchise agreements the Jefferson/Cox agreement was purposely written to include a broad range of services. The agreement anticipated that during the term of the agreement Cox would utilize the coaxial cable rights it bargained for to offer services other than cable television services. Specifically the agreement defined "Cable Communications System" or "Cable System" as follows:

"any facility operating by means of coaxial cable, fiber optic, or other transmission lines or otherwise, the primary function of which is to receive, through any means, including, without limitation, coaxial cable, fiber optic, or satellite or microwave transmission, and to distribute the signals of one or more broadcast television or radio stations and of other sources of video, audio, voice or data signals. Said facility may also be one which distributes to, from, or among Subscribers or other Persons such other video, audio, voice, or data signals as may originate within the Cable Service Area or elsewhere. The term Cable Communications System as used herein, shall include, without limitation, a "Cable System", as defined in Section 602 (6) of the Cable Act and any System which provides any Cable Service, as defined in Section 602 (5) of the Cable Act or any "Cable Television Service", as defined in the Louisiana Revised Statutes.

Cox acknowledges that this agreement with Jefferson Parish intentionally and specifically identifies a broad range of services and certainly includes services in addition to the one way transmission services referenced in the Cable Act. Cox has made it clear that it intended that its agreement with Jefferson Parish included additional two way and interactive services ( e.g. telephone and internet services).

II. THE COMMISSIONS CLASSIFICATION OF CABLE MODEM SERVICE AS AN "INFORMATION SERVICE" HAS RESULTED IN COX CABLE REFUSING TO PAY FRANCHISE FEES TO JEFFERSON PARISH.

Until the FCC ruling of March 15, 2002 Cox made payments to Jefferson Parish of 5% on gross revenues generated through its modem service without complaint. Immediately after the FCC decision, Cox notified Jefferson Parish it would cease payment on that portion of revenues derived from delivery of cable modem service notwithstanding the broadly worded contractual obligations in the franchise agreement.

Jefferson Parish maintains that payments for modem service are due and owing as agreed to in a validly effected contract and further that such revenues are necessary to fund administrative, consumer oriented services directly related to enforcement of the contract.

Sometime in 2000, Cox began offering high speed internet access to its customers in Jefferson Parish. To date Cox reports that it has penetrated approximately one-third of its cable television households with internet service. The payment of the franchise fee on internet service has never been identified by Cox as a hardship or other barrier to expansion or further deployment of internet or other communication services here. Indeed Cox continues to use the property rights it purchased in the franchise agreement to grow its services in dramatic fashion. Until the NPRM was handed down Cox believed that it had an obligation pursuant to its cable franchise agreement with Jefferson Parish to remit 5% of its gross revenues to the Parish for the provision of its services, be that a cable service as defined in the Act or another transmission. The definition of Cable Communications System, as the term is defined in the Jefferson/Cox agreement, clearly contemplated a broad range of services subject to a franchise fee. As a result of the FCC's decision to classify cable modem services as an information system, Cox now steadfastly refuses to pay franchise fees on some of these services, notwithstanding the agreement. We urge the Commission to consider allowing revenue from cable modem service to be included in the calculation of gross revenues for franchise fee purposes. At a minimum, the Commission should conclude that its ruling does not disturb or interfere with pre-existing contractual obligations requiring such payments where the agreements contemplated delivery of services which are in addition to those prescribed by the Act. It is clear, in the above cited definition of cable system, that the parties in this case anticipated delivery of services in addition to those specifically identified by the cable act.

In Paragraph 107 of the NPRM, the Commission states: "We note that until the release of the Commission's declaratory rulings to the contrary, cable operators and local franchising authorities

believe in good faith that cable modem service was "a cable service" for which franchise fees could be collected pursuant to section 622." In our case, Cox, not only believed, but agreed to include services other than those defined in section 622 for the purposes of franchise fees. However, Cox now cites the FCC ruling and definition of the cable modem service and refuses to pay franchise fees, notwithstanding its written agreement to the contrary.

Jefferson Parish administers and enforces its franchise agreement with Cox. That administrative function includes audit services, inspection services, and the administration of consumer complaints regarding Cox services. Those functions are essential. And they must be funded. The cost of administering and/or investigating such consumer complaints is significant. The proposed rule making has an adverse effect on this essential governmental responsibility. Jefferson Parish advocates that it should have the authority to collect sufficient fees to allow it to remain responsive to numerous complaints regarding Cox services provided to its citizens.

Respectfully submitted,

Jefferson Parish  
State of Louisiana

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